IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A No. 419 of 2001

Old No. 187 of 1998

Income Tax Application No. 401/2001
Commissioner of Income Tax,
Meerut …… Applicant
Vs.
ONGC as agent of British
Airways Helicopter, Dehradun ……. Opp.party.

Income Tax Application No. 403/2001
Commissioner of Income Tax,
Meerut …… Applicant
Vs.
ONGC as agent of Dowell Schduumberger(W)
S.A.Dehradun ……. Opp.party.

Income Tax Application No. 407/2001
Commissioner of Income Tax,
Meerut …… Applicant
Vs.
ONGC as agent of Sedco International
S.A.Dehradun ……. Opp.party.

Income Tax Application No. 408/2001
Commissioner of Income Tax,
Meerut …… Applicant
Vs.
ONGC as agent of Swaire Craneship
Corporation, Dehradun ……. Opp.party.

Income Tax Application No. 419/2001
Commissioner of Income Tax,
Meerut …… Applicant
Vs.
ONGC as agent of Schlumberger
Far East Inc., Dehradun ……. Opp.party.

Mr. S.K. Posti, Advocate for the applicant(s)
Mr. J.P. Joshi, Advocate for the respondent(s)

Coram: Hon. S.H. Kapadia,C.J.
Hon. P.C.Verma, J.

Date: 5.08.2003

PC:

A short question which arises for determination in these applications under section 256(2) of the Income Tax Act, 1961 is whether total income of Oil and Natural Gas Commission/assessee should include payment of surtax, which O. N. G. C. has paid under the Companies (Profits)Surtax Act, 1964.

The main objection of O.N.G.C. to these application is that O.N.G.C. was exempted under the provisions of the Companies (Profits) Surtax Act, 1964 and, therefore, it can not form part of the total taxable income under the Income Tax Act. This question is of some relevance and importance and in our view it needs to be answered by this Court under section 256(2) of the Income Tax Act, 1961. Therefore, we formulate the following question and direct the Income Tax Appellate Tribunal to refer the matter to this Court at the earliest alongwith statement of facts:

> Whether the surtax which stands exempted as far as O.N.G.C. is concerned by vide of notification from provisions of the Companies (Profits) Surtax Act, 1964 is includable in the total income of the assessee?

As stated above, this is a an important question of law. Therefore, the application is granted. The Tribunal shall forward the statement of case and also refer the question to this Court for our opinion.

Office is directed to list these matters immediately on receipt of papers from the Tribunal.

The applications are disposed of accordingly.

(P. C. Verma,J.) **(S. H. Kapadia, C.J.)**

AK